



Missouri Department of Natural Resources

MISSOURI CLEAN WATER COMMISSION MEETING

March 19, 2002

Capitol Plaza Hotel, Jefferson City, Missouri

MINUTES

Present

Thomas A. Herrmann, Chairman, Missouri Clean Water Commission
Davis D. Minton, Vice-Chairman, Missouri Clean Water Commission
Janice Schnake Greene, Commissioner, Missouri Clean Water Commission
Arthur E. Hegi, Commissioner, Missouri Clean Water Commission
Cosette D. Kelly, Commissioner, Missouri Clean Water Commission
Kristin M. Perry, Commissioner, Missouri Clean Water Commission

Mike Alesandrini, RCGA, St. Louis, Missouri
Katie Auman, Dogwood Alliance, Yellville, Arkansas
Joseph P. Bachant, Department of Conservation, Jefferson City, Missouri
Jim Belcher, Department of Natural Resources, Jefferson City, Missouri
Dorris Bender, City of Independence, Independence, Missouri
Doug Bice, Doe Run Resource Recycling, Boss, Missouri
Brian Brookshire, Department of Conservation, Jefferson City, Missouri
Robert Brundage, MO-Ag/PSF, Princeton, Missouri
John Bryan, The Poultry Federation, Jefferson City, Missouri
William Bryan, Assistant Attorney General, Jefferson City, Missouri
Mark Buersmeyer, Department of Natural Resources, Jefferson City, Missouri
John Carter, The Doe Run Company, Viburnum, Missouri
Justin Carver, Rainbow Acres, Jefferson City, Missouri
Mary E. Cheesebrow, Washington University, St. Louis, Missouri
Ann Crawford, Department of Natural Resources, Jefferson City, Missouri
Steve Crawford, Wideman Well Drilling, Union, Missouri
Beth Cunningham, American Bottoms Conservancy, St. Louis, Missouri
Cindy DiStefano, Department of Conservation, Columbia, Missouri
Carol Eighmey, Petroleum Storage Tank Insurance Fund, Jefferson City, Missouri
Greg Evans, Wellhead Installation Board, Crane, Missouri
Ryan Furniss, American Bottom Conservancy, St. Louis, Missouri
Jason Grantham, Wideman Well Drilling, St. Clair, Missouri
Stanley Grantham, Grantham Drilling Company & MWWA, Perryville, Missouri
Thomas R. Gredell, Gredell Engineering/CECMO/MSPE, Jefferson City, Missouri
Rick Guill, A-1 Pump, Rolla, Missouri
Ed Galbraith, Department of Natural Resources, Jefferson City, Missouri

Frank Hackmann, RCGA, St. Louis, Missouri
Bart Hager, Metropolitan St. Louis Sewer District, St. Louis, Missouri
Roy C. Hengerson, Sierra Club, Jefferson City, Missouri
Bob Hentges, Missouri Public Utility Alliance, Jefferson City, Missouri
Tim Hippensteel, Environmental Operations, Inc., St. Louis, Missouri
N. D. Houston, Neosho, Missouri
Bill Johnson, Delta Environmental Consultants, St. Peters, Missouri
Robert L. Johnson, Collinsville, Illinois
G. Phil Keany, U.S. Department of Energy, Kansas City, Missouri
Ann Keener, Region VII EPA, Kansas City, Kansas
Sallie Keeney, REGFORM, Jefferson City, Missouri
Carla Klein, Sierra Club, Columbia, Missouri
Robert Kravitz, Midwest Environmental Consultants
Richard J. Laux, Department of Natural Resources, Jefferson City, Missouri
Dale Lett, Grove Drilling, Inc., Grove, Oklahoma
Maxine Lipeles, Washington University School of Law, St. Louis, Missouri
John Madras, Department of Natural Resources, Jefferson City, Missouri
Beth Martin, Washington University, St. Louis, Missouri
C. Dean Martin, Department of Natural Resources, Jefferson City, Missouri
Diane Miller, Missouri Oil Council, Jefferson City, Missouri
Kevin Mohammadi, Department of Natural Resources, Jefferson City, Missouri
Denis Murphy, The Doe Run Company, Viburnum, Missouri
Mike Mullin, Holcim, St. Louis, Missouri
Deborah Neff, Assistant Attorney General, Jefferson City, Missouri
Jack Norman, Groundwater Advisory Council, Columbia, Illinois
Richard Nussbaum, Department of Natural Resources, Jefferson City, Missouri
David Overhoff, Department of Natural Resources, Jefferson City, Missouri
Earl Pabst, Department of Natural Resources, Jefferson City, Missouri
David L. Pate, Williams & Company/PSTIF, Jefferson City, Missouri
Kevin Pelton, Pelton Well Drilling, St. Clair, Missouri
Normal Pelton, Lonedell, Missouri
Ray Pelton, Ray Pelton Pump Company, St. Clair, Missouri
Jim Penfold, Department of Natural Resources, Jefferson City, Missouri
Kevin Perry, REGFORM, Jefferson City, Missouri
Kieth Piontek, The Forrester Group
Norb Plassmeyer, Associated Industries of Missouri, Jefferson City, Missouri
David Potthast, Department of Natural Resources, Jefferson City, Missouri
Charles L. Raab, City of Kansas City, Kansas City, Missouri
John Reece, Little Blue Valley Sewer District, Independence, Missouri
Joy Reven, Department of Natural Resources, Jefferson City, Missouri
Kris Ricketts, Department of Natural Resources, Jefferson City, Missouri
Cory Ridenhour, Missouri Forest Products Association, Jefferson City, Missouri
Rick Roberts, Gredell Engineering Resources, St. Ann, Missouri
Ted Salveter, City Utilities of Springfield, Springfield, Missouri
David Schnell, Schnell Drilling Company, Rocheport, Missouri

Steve Schnell, Boonville, Missouri
Tommy Schnell, Boonville, Missouri
W. F. Schnell, Boonville, Missouri
Dan Schuette, Department of Natural Resources, Jefferson City, Missouri
Carrie Schulte, Department of Natural Resources, Jefferson City, Missouri
Elaine Seele, Missouri-American Water Company, St. Louis, Missouri
Becky Shannon, Department of Natural Resources, Jefferson City, Missouri
David Shorr, Jefferson City, Missouri
Angela Strain, Delta Environmental, St. Charles, Missouri
Ken Struempf, Department of Natural Resources, Jefferson City, Missouri
Scott B. Totten, Department of Natural Resources, Jefferson City, Missouri
Steve Townley, Department of Natural Resources, Jefferson City, Missouri
Tom Tunncliff, Chesterfield, Missouri
Nongluk Tunyavanich, Meramec Regional Planning Commission, St. James, Missouri
Larry VanGilder, Taney County Regional Sewer District, Branson, Missouri
Kara Valentine, Assistant Attorney General, Jefferson City, Missouri
Bob Veenstra, URS Corporation, Maryland Heights, Missouri
Diane Waidelich, Secretary, Missouri Clean Water Commission
Llona Weiss, Department of Natural Resources, Jefferson City, Missouri
Jim Weston, Missouri Water Well Association
Robert L. Wideman, MWWA/Wideman Well Drilling, St. Clair, Missouri
Scott Williams, Department of Natural Resources, Jefferson City, Missouri
Robert Williamson, Kansas City Water Services, Kansas City, Missouri
Bruce Wylie, CECMO/MSPE, Jefferson City, Missouri

**Public Hearing on Proposed Rule 10 CSR 20-7.040 Comprehensive Risk-Based
Groundwater Remediation Rule**

All witnesses were sworn in by the court reporter to testify at a public hearing held on Proposed Rule 10 CSR 20-7.040 Comprehensive Risk-Based Groundwater Remediation Rule. A transcript of this hearing will be available for review at the office of the Missouri Clean Water Commission, Jefferson State Office Building, 205 Jefferson Street, Jefferson City, Missouri.

Presentations on Ag Nonpoint Source SALT and 319 Grant Programs

Becky Shannon, Interim Chief of the Water Pollution Control Program Planning Section, reported the commission requested at its February meeting that a joint meeting be scheduled with the Soil and Water Conservation Districts Commission to discuss funding for nonpoint sources of water pollution. She stated staff will be unable to schedule this meeting until this summer. To help in discussions regarding the Intended Use Plan and other issues Ken Struempf presented an overview of the SALT program.

Ken Struempf, Soil and Water Conservation Program, noted the Agricultural Nonpoint Source (AgNPS) Special Area Land Treatment (SALT) grant is available to the Missouri Soil and Water Conservation Districts to concentrate efforts in a watershed to lessen the impacts of agricultural nonpoint source pollution. This grant allows for districts to place additional money in the watersheds through these SALT projects to lessen the agricultural water quality impairments that exist. The grants are funded through the one-tenth of one percent Parks and Soils Sales Tax and administered by the Department of Natural Resources Soil and Water Conservation Program.

Mr. Struempf reported that through the Soil and Water Conservation Program there is approximately \$38 million available for the state for the conserving of the soil and water resource. The 38 million dollars are budgeted as follows: Cost share - \$20 million; SALT - \$6.9 million; Loan interest share- 800,000; research purposes- \$160,000; district benefits grants that helps them with health insurance and a retirement plan for the district employees - \$1.2 million; district grants for technical support to help implement practices appropriately - \$5.9 million; soil survey - \$1.5 million; general administration purposes - \$1.4 million.

The mission of the SALT program specifically is to improve, protect and maintain the water quality of the state through the prevention and reduction of agricultural nonpoint source pollution using the watershed based approach. SALT projects across the state currently total 28. In 1997, 12 projects were approved and in 1999 and 2000 an additional 16 projects were approved. There are an additional 12 districts that have submitted projects to our commission that are awaiting consideration. If all these projects are approved there will be a total of 40 SALT projects, of which 12 of projects will be addressing waters listed on the 303(d) List.

Mr. Struempf reported the SALT program tries to target watersheds between 20,000 and 60,000 acres because of the manageable size. Five to seven years is the length of time is strived for. The boundaries eligible for these grants are a complete topographical watershed or HUC. Priority has been given to waters on the 303(d) List and the main intent is to offer incentives for practices for landowners to voluntarily implement practices to improve water quality. The commission will authorize a call every year for the next three years. Future calls will be dependent upon the tax being renewed in 2008. A call is issued in May or June with the preliminary applications due in September. Final proposals are due in February. An Interagency Review Group meets in March to discuss these proposals and rank them for commission consideration. The awards are granted in May and the projects are implemented in July.

The Soil and Water Districts Commission goals for the SALT program are reducing pesticide, improving nutrient management, improving pasture management, reducing sediment loads, improving animal waste management, protecting and enhancing riparian areas, and informing and educating producers of the impacts of agricultural nonpoint source pollution. Mr. Struempf noted with any of these projects there has to be an information and education component to get more landowners involved to have good participation in a watershed to be able to see an impact.

Mr. Struempfh explained staff likes to see the districts develop a project and try to address everything that they feel is important and then submit proposals that coincide with what the commission's goals are. For instance, the district may develop a project to address flood control, wildlife, and water quality concerns. In SALT proposal, they need to identify everything that has water quality impacts due to agriculture non point source pollution and submit only those problems to the commission for consideration. The district needs to seek partners to address other items in their project.

The commission has identified areas of interest that they will fund. Typically with the SALT Grants, cost share incentives comprise of 60-70% of the total SALT grant for implementing cost share practices voluntarily. A portion is for information and education. Demonstrations are included to get farmers more interested in practices. The districts are allowed to purchase a piece of field equipment to demonstrate how this new innovative equipment can be used on the landowner's farm. Mr. Struempfh commented that in the past a lot of no-till drills have been purchased but now more agitation and pumping equipment for lagoons is being seen. Typically the district buys the equipment and rents it to the landowners. With loan interest share incentives, a portion of the loan amount is paid if money is borrowed to implement some of the practices or to purchase a piece of equipment to do these conservation practices. Personnel expenses are for technical and administration costs in the office. A technician is provided for each project to help the landowners work through what conservation practices they need to implement on their property. A portion of this grant is provided for additional expenses in the offices due to taking on more funds and for miscellaneous office items associated with them.

Mr. Struempfh reported that the experiences with current 28 projects illustrates the need to leverage other partners to have successful projects. A lot of the districts are using the 319 funds for a portion of their project.

Commissioner Perry commented that they spend only \$160,000 per year on research and asked if there is a limitation on this.

Scott Totten, Interim Director of Staff, responded the commission has a line item appropriation of \$160,000. A request for proposal is sent out with criteria set for what can be researched. There have not been enough applications recently for the available money.

Commissioner Perry noted it is such a tremendously low percentage of the operating budget. Much of the other money is being used to implement those research techniques that have been done in the past. Commissioner Perry questioned why new methods that would be more effective and aggressive are not being looked for.

Mr. Struempfh replied they are searching for more effective ways to do some of these practices but there are not a lot of proposals submitted to address a lot of those issues. Staff would like to find practices that are more cost effective to implement than what is currently being done.

Commissioner Minton noted these NPS SALT projects were pilot projects originally to identify and try to address water quality issues. He asked why are those practices not ultimately included in the regular cost share when the projects have proven to be successful.

Mr. Struempf responded the cost share program tries to address soil erosion on lands specifically eroding above "T" to reach the commission's goal of reaching "T" by 2006. The only way the commission is going to be able to reach this goal is by cost share program focusing mainly on sediment control on acres that are eroding above T. The SALT program is different in that the commission focuses on water quality impacts due to agricultural practices. Just because they are proven successful in the SALT area, they may just be addressing water quality impacts and not necessarily dealing with erosion.

Commissioner Minton stated with the SALT projects, especially in highly agricultural areas, any time that you minimize impact to the landmass you are affecting erosion and that does play a role in establishing T. He asked why once programs that affect the landmass are developed, they aren't broad based to be utilized by everybody in the state. He noted many of the counties in the state have to send their cost share allocation back to the central office every year because there are no cost share projects on the docket that are applicable to their communities. Over half the money is being spent in Northeast Missouri. Commissioner Minton noted of the \$750,000 spent in the Bootheel of Missouri, the entire region should have enough items on the cost share docket to be able to use the money. He stated the commission is the Soil and Water Conservation Commission not just the soil commission. Commissioner Minton noted he has pleaded this case to the Soil and Water Conservation Commission to no avail. He noted hopefully the funding problem for NPS will be resolved within the Clean Water Commission. Commissioner Minton noted he thinks it is practical to address the concerns that many districts in the state have regarding not having projects on the cost share docket where they can spend their money. He noted he believes it's unfair that this docket is rarely expanded upon. Commissioner Minton noted he is motivated to make sure that the Department of Natural Resources recognizes that both will be approached with the same eagerness that they are entitled to. He noted it is unfair that these projects can effect erosion and impact water quality but no one is allowed to participate other than in that watershed where those practices have proven to be successful.

Mr. Struempf responded the Clean Water Commission will have the opportunity to meet with the Soil and Water Conservation Commission to voice some of these concerns.

Commissioner Perry asked if businesses can qualify for SALT grants.

Mr. Struempf replied only Soil and Water Districts can apply for SALT grants. If someone is interested in having a SALT project for landowners in their area, they can approach a district office about applying for these grants.

Commissioner Minton asked if anything is in place to spend this money when the commission quits calling for SALT projects.

Mr. Struempfh replied when the commission approves annually 12-15 SALT projects in a fiscal year, this takes between \$7.5 million and \$10 million per call issued. The Soil and Water program does not have a large reserve of money to fund those projects and will need revenues until 2008 to honor those commitments. After 2005 there will be approximately 68 projects approved by our commission, to fund those 68 projects it will take all the 6.9 million dollar SALT annual appropriation until the sunset of the tax in 2008. The revenue from 2006 - 2008 will be needed to cover the expenses already committed by 2005 for the 68 total projects approved. Water quality will always be important to address. Until staff knows that the tax is renewed, they will not be able to issue any more new calls because the funding will not be in place to fund more projects.

Commissioner Minton noted if the tax does not pass the water quality program for NPS pollution will be nonexistent.

Mr. Struempfh responded that is correct and it is very important to get the tax passed.

Commissioner Perry stated this is also a major source of funding for maintaining the districts themselves.

Mr. Struempfh replied that roughly 20 - 25% goes to personnel to help landowners identify problems and help them appropriately address the needs that they have. The technical people can help identify and implement the correct practices that will have a life span of 10-15 years.

Chairman Herrmann noted the commission gets a list of these projects but they are interested in success stories that have evolved from this money.

Ms. Shannon reported 319 was used to fund a demonstration project in Southeast Missouri at the Delta Center that lead directly to an increased use of that particular technology throughout the Bootheel area. In Laclede County, a SALT project came into play with an animal waste project. Ms. Shannon asked if the commission is interested in 319 only or SALT as well.

Chairman Herrmann asked for success stories for 319 and SALT projects.

Ms. Shannon noted this will be provided. She continued the SALT money is restricted in that it can go only to the Soil & Water Conservation Districts. 319 funds can go to the districts but can also go to any number of partners. Funding can be done for other than agricultural NPS concerns. 319 fills in where traditional cost share or the SALT can't. The chief difference between the two funding sources is the governing entity. EPA determines what projects money is spent on and how it is administered. The SALT money is somewhat more flexible because it is state money. Ms. Shannon noted the moneys through the cost share program are relied on for a certain percentage of the match for the 319 program. Expenditures in certain counties are documented to match some of the 319 work that is done.

Project Cost Adjustments

Steve Townley, Chief of the Water Pollution Control Program Financial Services Section, reported on a project cost adjustment request from the Duckett Creek Sanitary Sewer District located in St. Charles County. The FY 2002 Intended Use Plan lists the sewer district's application as \$3,321,000. The sewer district requested an increase to \$3,900,000 to fund the entire scope of the project. Mr. Townley noted there are sufficient funds from the uncommitted reserve and the increase amount is to be deducted from the FY 2003 request. He concluded that staff supports this request and anticipates closing on this loan the later part of April.

Responding to Chairman Herrmann's question, Mr. Townley agreed that 73.01 priority points is current for this project.

Commissioner Hegi moved to **approve the project cost adjustment for the Duckett Creek Sanitary Sewer District** as recommended by staff; seconded by Commissioner Perry and unanimously passed.

Nonpoint Source Discussion

Mr. Townley noted the commission has asked staff to review opportunities for participation of the nonpoint source (NPS) community in funding programs and to offer suggestions prior to the decision on the Intended Use Plan (IUP). He stated staff has offered to review some of the outstanding programs that are available to the agricultural community through the various state and federal programs. Mr. Townley noted there is quite a bit of opportunity for the agricultural community to participate in some form in a wide variety of NPS activities. The present funding program has tried to find a niche among the various programs and the needs of the agricultural community. The program developed through the Agricultural and Small Business Development Authority has been in the IUP for six years and is probably the most comprehensive SRF agricultural program in the nation. Mr. Townley stated it has not used the full funding that has been available to it through the program noting that is due to EPA's definition of a confined animal feeding operation (CAFO) and the inability and non-eligibility of CAFO operations to apply to the program. Staff has tried to develop the program among the other agricultural needs and have recently expanded the program in a NPS fashion to the deep well program in Newton and Jasper Counties and are planning to begin a septic tank program during this year. Mr. Townley stated staff is willing to do what is necessary to make a significant and fiscally responsible program that can be offered to the agricultural community. He noted at this time he is not sure how the scope of the existing agreement with the Department of Agriculture and their Authority, or any of the other programs, might be broadened. He asked for guidance and noted staff is ready to review with the commission what is eligible under the current agreement with the agricultural authority.

Chairman Herrmann asked if the scope and intent of the on-site systems funding is individual septic tanks.

Mr. Townley responded staff expects to get into a septic tank elimination or upgrade program at the individual homeowner level sometime later this year. There is a NPS program available in the IUP that has been done with MSD and St. Charles County to eliminate septic tanks. This program goes into subdivisions and builds collection systems rather than upgrading a septic system or changing that to some other technology.

Chairman Herrmann asked if the Department of Natural Resources works with the Department of Health on this.

Mr. Townley replied the Department of Health will be doing the initial and final inspections to ensure the work has been completed in accordance with their design criteria.

Chairman Herrmann asked if the commission's design criteria would be followed for the replacement systems.

Mr. Townley replied this will be a replacement individual home treatment system, not a collection system.

Chairman Herrmann stated the Department of Health's present standards are less than desirable.

Mr. Townley noted he is aware of concerns with these.

Chairman Herrmann noted septic tanks were previously the responsibility of the Water Pollution Control Board and the Department of Health was responsible for the total program. He continued he has never understood how the Department of Health can supplant the technical knowledge of engineering personnel to implement the septic tank program, which in his opinion, has never been done very well.

Commissioner Perry noted she is concerned about the indication on the 303(d) List that a large percentage of the impaired waters listed are listed as NPS pollution. These are point sources and what is impairing the waters of the state may be 25-50 percent of those cases and this concern is not being addressed. Commissioner Perry continued that it points the finger saying that must be NPS and since agriculture owns most of the land out there it must be their fault; there is no proof of exactly what is causing it or where it's coming from. Commissioner Perry stated resources are not being focused on trying to fix the problem.

Mr. Townley replied staff is somewhat limited in what they can do through the State Revolving Fund over the years with respect to NPS. One of the principal criteria that was contained in the original guidance specifies that loans can be made and must be secured by a dedicated repayment source when talking about communities, dedicated repayment sources, or bond issues. Mr. Townley explained this is why staff has historically only done financings

through the issuance of a bond issue. The scope of the agreement with the Department of Agriculture for the Ag Loan Program includes just about everything. That original agreement was centered around a repayment source that principally was identified by agreements with producer type organizations to do an aid intercept sort of proposal so the dedicated repayment source was available. Since that time EPA has become somewhat more comfortable with the program and the dedicated issue has taken on a new definition. Staff has not proposed to the commission to do loans to individuals. This process is potentially beginning under the septic tank program. The deep well aquifer program involves loan guarantees. Mr. Townley stated there may be a need to evolve this program into direct loans as well. He continued there are real security problems when that is done. The level of effort from staff would be much greater and staff has not been comfortable enough to propose to management to do unsecured loans. The fund is well over subscribed for point source activities where there are the most secure financial arrangements. Mr. Townley stated this is a whole new area that will take much more initiative than is presently available. He continued if the commission wishes to move forward with this, staff can make a recommendation to management. Mr. Townley noted it is possible that some of the money that has been identified for agriculture could be used for a new program. He further stated that this will cost a lot more to administer. There will be defaults and foreclosures and costs and liabilities will be incurred because of this.

Commissioner Perry asked what the source of the \$6 million is.

Mr. Townley responded about \$1.5 million has been used per year for the ag loan program. Staff has identified for this program in the 2003 IUP a \$6 million allocation.

Commissioner Minton noted the \$6 million is part of the \$11 million appropriated for the NPS program. He asked that staff provide an accounting of how the Department of Agriculture is spending the money and how the recipients are using the money. Commissioner Minton stated he appreciates the summary provided by staff. He continued the cost share, 319, loan interest share and the SALT projects are about the only ways the large landmass of the state is being treated. Only a very small portion of the cost share money is actually going for water quality issues, almost all going toward erosion control. Commissioner Minton stated he is concerned that TMDLs are still being formulated on receiving streams and, at some point in time, the voluntary programs that are in place to address these issues won't be enough for the EPA. He continued that rules are going to have to be promulgated to control nutrient management, pest management, the way the water runs off ag fields, private lands, homeowners properties, parking lots and so forth. Commissioner Minton stated that very little is being done monetarily to address those issues, recognizing the four components done as an agency. Most everything else is federally funded from FSA and NRCS. He stated there is a willingness in the state to do the right thing but they have to have education and assistance. Many of the programs are very expensive and will yield no monetary gain to the landowners themselves; it is being done to protect the environment. Commissioner Minton stated that if rules continue to be promulgated and 303(d) Lists continue to be identified, then it is criminal not to start a process to fund NPS programs. If new mechanisms have to be developed to deliver that money to the state, then it needs to be

done. If more staff is needed to do it, then find them or quit the process. Commissioner Minton noted the information provided confirms what he has known for a long time. He stated NPS is not the priority of the Department of Natural Resources and he does not expect it to be the number one priority but he expects it to get the recognition that it deserves. Commissioner Minton noted he is disappointed that this is the best that can be done and that he will go back to his area with the failure to establish a cost share docket that addresses NPS pollution in front of the Soil & Water Conservation Commission and now the Clean Water Commission will not be doing anything to affect what the agricultural community tries to do to protect the water quality of the state.

Mr. Townley pointed out there was approximately \$4.5 million set aside under the Rural Water & Sewer Program to match funding that was available under the CRP program or the EQIP program. The Storm Water Grant & Loan Program, which provides \$20 million per year to first class counties or cities within those counties to address storm water problems, addresses erosion control in urban areas.

Commissioner Minton noted if the Department of Agriculture uses only \$1.5 million, that leaves several million that has been appropriated that will not be used. He asked how difficult it would be through the county Soil & Water Conservation offices to take those dollars and spread them out onto the cost share docket that legitimately addresses water quality issues. Commissioner Minton suggested making funds available for education, agribusinesses, and correcting septic tank problems. He asked what will happen to the funds if the Department of Agriculture does not utilize them.

Mr. Townley noted this money will be recovered next year and put back into projects or reallocate it back to the Department of Agriculture.

Commissioner Minton stated if the money is not being used, something constructive should be done with it. He asked about developing a cost share docket similar to what the Soil & Water Conservation Commission does so people could participate in these programs through their local offices.

Mr. Townley responded one of the things that staff wanted to do in the beginning of this program was to loan money to the Soil & Water Districts so that they could buy no-till equipment and make that available to the farmers. Mr. Townley explained the problem with this is that the districts cannot borrow money. Staff has gone to the counties trying to get them to borrow money and they cannot reloan money because this is not an activity specifically addressed in the statutes.

Commissioner Minton asked why cost share can't be done.

Mr. Totten noted the loans have to be repaid.

Mr. Townley stated everything under the SRF is loans.

Commissioner Minton asked if the Prairie Foundation was repaying their money.

Mr. Townley responded they would if the foundation moved forward; they would use the dues from their membership as their dedicated source of repayment.

Commissioner Minton noted he knows staff has tried to help him on this issue but he feels the commission is falling very short of the target.

Commissioner Hegi voiced his concern about septic tanks and lateral lines still being put in throughout the Ozarks when there is no way they will work.

Mr. Townley responded there have been many presentations from communities wanting grant monies to eliminate septic tanks within their communities. It can be quite expensive to eliminate these. If it had been done right the first time, it would not have cost half as much. Mr. Townley continued there is a real concern with the approach staff is taking because of the cost to fix these situations after-the-fact.

Commissioner Hegi noted there is an excellent video available that was made for the White River Basin Conference that shows how bad this situation is but septic tanks and lateral lines are still being installed.

Mr. Townley noted he is totally sympathetic but he does not have an answer for this. He commented that if the commission wants staff to come back at the next meeting to discuss evolving some of the ag programs staff will certainly entertain this.

Commissioner Perry asked how much the Department of Natural Resources spends on its own research projects.

Mr. Townley replied there is no research done through any of the programs he administers.

Discussion on this item concluded without any additional direction to staff.

Final Action on Fiscal Year 2003 Clean Water State Revolving Fund Intended Use Plan and State Grant Priority List

Carrie Schulte, Water Pollution Control Program Financial Services Section, summarized comments received on the proposed FY 03 Intended Use Plan (IUP) prior to the February 20 deadline.

In a letter dated January 4, 2002, the Little Blue Valley Sewer District (LBVSD) requested that the commission reevaluate the priority points assigned to the Phase II Wastewater Treatment Plant Project and funding as presented in the FY 2002 Intended Use Plan (IUP). Those priority points were recalculated and their priority points are now listed as 8.87.

Responding to Chairman Herrmann's question, Mr. Townley noted these priority points are based on the effect on the streams by the total district rather than a subdistrict.

At the February 13, 2002 public hearing on the FY 2003 IUP, the LBVSD requested that their Phase II treatment plant construction project be moved from the Phased Project-Partial Contingency List to the New Projects (fundable) List. In recognition of last year's application and the district's voluntary fundable list reduction, staff recommended that the LBVSD project be placed on the fundable list at \$65,815,000 and that the project be considered a Carryover Project. The dollar amount constitutes the total fundable and contingent dollars from the FY 2002 IUP. The LBVSD's FY 2003 application requested additional funding for the project in the amount of \$20,185,000. Staff recommends that this amount be placed on the Priority Point Contingency List.

In a letter dated February 19, 2002, the Metropolitan St. Louis Sewer District (MSD), in response to the February 13 comments by LBVSD, requested three changes to the draft FY 2003 IUP.

1. The Lower Meramec River Outfall Sewer be moved from the Voluntary Contingency List to the New Projects (fundable) List.
2. The scope of the fundable portion of the Lower Meramec River Wastewater Treatment Plant project be reduced to \$14,000,000 from \$60,178,000, with the balance of the project scope (\$46,178,000) being placed on the Phased Project – Partial Contingency List.
3. The scope of the fundable portion of the Lower Meramec Baumgartner Tunnel project be reduced from \$18,441,140 to \$8,000,000 with the difference being added to the phased project contingency dollar amount listed in the Draft FY 03 IUP for that project (\$15,706,860) to result in a revised dollar amount of \$26,148,000.

Staff concurred with the suggestions of the MSD. Granting the requests of the MSD results in the ability to fund additional projects from the Draft FY 2003 IUP Priority Point Contingency List. Ms. Schulte noted with those changes a few more projects were picked up from the Contingency List.

Commissioner Hegi asked for an explanation of partial contingency list.

Ms. Schulte explained the Contingency List is divided into three sections. The first area is listed as a phased, partial contingency. That's a part of a project rather than the entire project.

Commissioner Hegi noted this issue came up at the last meeting and he wondered if this was the same type of situation.

Ms. Schulte responded in most cases the money is needed to complete the projects but they are not ready to complete the project within the year.

Commissioner Hegi asked if there is an obligation to complete the funding for these communities.

Ms. Schulte said there is an obligation in that the project has to be completed. She stated that MSD put some entire projects on the voluntary list.

The City of Marthasville requested to be removed from the Leveraged Loan List. Staff concurred with the request.

Chairman Herrmann asked why the city requested to be removed.

Mr. Townley explained Marthasville will finance their project outside of the SRF and phase the project over several years.

The Taney County Sewer District Table Rock Acres project was previously listed under one of the state programs. Staff has reviewed the financial capability of Taney County for this project and recommended that this project be placed on the Fundable Leveraged Loan List as a new project.

The Duckett Creek change moves money from one list to another, which will be included in the IUP.

Ms. Crawford reported on the State Grant and Loan Lists and SRF Direct Loan List.

The City of Fremont Hills requested that their 40% grant amount be increased on the State 40% Grant List on the Draft Final IUP. The city needs to have phosphorus removal. The city was on the Contingency List for Special Infrastructure Grants on the proposed list. Staff felt phosphorus removal can be funded with the 40% grants. Staff agreed with the city's request to incorporate the eligible project costs both for the phosphorus portion and the portion that was shown on the 40% grant list and base the 40% grant on that. Ms. Crawford noted sufficient funds are available and did not affect any other projects. The grant amount was increased \$70,245 for a total grant amount of \$146,212. The city is still on the Special Infrastructure grant contingency list. The city is able to get more money through this program if it becomes available.

The City of Blairstown requested that their project be evaluated for inclusion on the Hardship Grant List. After staff evaluation of the project, it was found they do qualify for a Hardship Grant; 2% of their median household income is \$20.27. They would have had to pay \$51.64 for their user rates with a 60% loan. Staff felt they should be placed on the Hardship Grant List since they did meet the other criteria. This did not affect any other communities. The city has been placed on the Hardship Grant List for \$831,000. With a Hardship Grant, the user charge would be approximately \$22.42 for operation, maintenance and replacement only.

The City of Mosby requested that it be funded if funds became available. Because the City of Blairstown was moved to the Hardship Grant List, the City of Mosby became fundable. The city has been placed on the Fundable 40% Grant List for \$280,000.

The Village of Theodosia requested an increase of \$192,000 in Hardship Grant money. The village is getting ready to open bids within the next two weeks and were concerned about some geologic problems in their area. This change would not affect other communities, so staff increased the Hardship Grant. If the bids come in low, this money will be recovered.

The Taney County Sewer District requested consideration for the 40% Grant program for the Table Rock Acres project that at one time appeared on the Hardship Grant List. They would have to have a very high user rate to comply with the regulation that it be 2% of the median household income. Table Rock Acres is not an incorporated area so county criteria is used to base that 2% on. The Taney County Sewer District appears to be managerially and financially capable of taking an SRF loan. The project has been shifted fully fundable on the Leveraged Loan List and removed from the Hardship Grant List.

Commissioner Perry asked if there is any history of adding any other requirements to the loan project, such as having a consultant for air quality control, when making loans.

Ms. Crawford responded they have to comply with the Clean Air Act but nothing specific is printed in the specifications.

Commissioner Perry noted a suggestion was made that one of the sewer districts be required to have an independent consultant to provide assistance in odor control. She asked if this is something that has been proposed before.

Mr. Townley replied the Little Blue Valley Sewer District application covers the upgrading of their wastewater treatment facility which is experiencing problems with being hydraulically and organically overloaded along with experiencing odor emissions. The latter issue has been referred to the Attorney General's Office. Mr. Townley reported the aspects of their program to complete odor control have been designed. Plans and specifications have been submitted to the Air Pollution Control Program for review and the district is applying to them for a permit to construct once the reviews are completed. Mr. Townley stated he believes the Attorney General's Office is in general concurrence with the timelines. He concluded staff will keep current on this issue.

Chairman Herrmann asked who the designer of the plant modification is.

John Reece, Little Blue Valley Sewer District, responded it is a joint project between Archer and CH2M Hill.

Commissioner Perry asked if staff believes it is necessary for the commission to require an independent consultant to review their odor problem.

Mr. Townley replied he does not feel this is necessary. Staff is working well with the Air Pollution Control Program and this does not appear to be necessary to achieve timely compliance.

Commissioner Perry noted she does not see how the Clean Water Commission can require compliance with the air statute.

Mr. Townley reported the commission expressed concern at the last meeting regarding the Table Rock Acres project. Options presented at that time were: analyze the situation and offer regulatory language that might affect a different application; the sewer district apply for a variance from the regulation that might impact them; the project proceed through loans available to them through the State Revolving Fund which was the staff recommendation; secure funding through other financial sources if a loan does not satisfy their needs; proceed through the 40% Grant Program recognizing that special commission action would have to be taken in order to place them on that program; and the regional sewer district finance the program through local funds. Mr. Townley stated another option for Table Rock Acres is to place them on the 40% Grant Contingency List should funds become available.

Commissioner Greene moved to **adopt the Fiscal Year 2003 Clean Water State Revolving Fund Intended Use Plan and State Grant Priority List** as recommended by staff; seconded by Commissioner Kelly and passed with Commissioner Minton voting against.

Commission Action on Matters to be Referred to the Office of the Attorney General

Warren County Water & Sewer Company

Kevin Mohammadi, Chief of the Water Pollution Control Program Enforcement Section, reported the Warren County Water & Sewer Company is owned and operated by Gary Smith. The company owns, among other things, two wastewater treatment plants that serve Incline Village in Warren County. Both treatment plants discharge to a tributary of Incline Village Lake and both have been cited for chronic exceedence of effluent limits and for lack of maintenance.

In June 1999, while conducting a complaint investigation, department staff discovered that the contents of a grinder pump's wet well were pumped out onto the ground by Mr. Smith's company instead of being hauled away and disposed of properly. A Notice of Violation was issued for putting or placing and failure to report a bypass.

In April 2001, St. Louis Regional Office staff conducting surveillance discovered a manhole that was overflowing. Staff left messages on Mr. Smith's answering machine on April 18 and 19, 2001 but received no response. On April 20, 2001, staff observed that the bypass was still occurring. The regional office did not receive a report of when the bypass was stopped.

In May 2001 the region received a 'Report of Bypass' for a bypass that occurred at this same plant from April 11 to 16, 2001. Mr. Smith also failed to notify the region of these bypasses by phone within 24 hours of occurrence, as with the bypass that occurred from April 18-20, 2001.

Mr. Smith has indicated that he will not pay the permit fees associated with his operating permits. These fees total \$6,000.00, and he has received a third notice of delinquency for both of the fees. As of this date, the penalty for late payment comes to \$1,080.00, for a total of \$7,080.00 that Mr. Smith currently owes the department.

Extensive repairs or upgrades of the two wastewater treatment plants are necessary to bring them into compliance with the Missouri Clean Water Law. Mr. Mohammadi recommended referral to the Attorney General's Office for appropriate legal action.

No one was present representing Warren County Water and Sewer Company.

Commissioner Perry moved to **refer the Warren County Water and Sewer Company to the Office of the Attorney General** for appropriate legal action; seconded by Commissioner Greene and unanimously passed.

Homestead Village Wastewater Treatment Plant

Mr. Mohammadi reported Homestead Village wastewater treatment plant, owned and operated by the city of Homestead Village, is an extended aeration activated sludge plant with waste sludge disposal by a contract hauler. The plant has a design capacity of 20,000 gpd and serves 175 residents. The receiving stream is an unnamed tributary of the East Fork Fishing River. Effluent from the plant appears to provide 50-75% of tributary flow.

The wastewater treatment plant has had a chronic solids loss problem since the mid-80s. Continuous infiltration and inflow problems cause the plant to be hydraulically overloaded, even during off peak hours or dry weather. The plant is often operating with too little sludge for proper activation because the solids have been washed to the tributary. An inspection in December 2001 by the Kansas City Regional Office and Water Pollution Control Program staff observed the tributary adversely impacted with sewage sludge. The stream was walked from the point of discharge to the property line. For the entire walking distance, the streambed was not visible. It was covered in 3-6" of gray sludge. The odor for the entire length was that of untreated sewage. The wastewater treatment plant's effluent appeared no different than the influent or the tributary water. Permit limits for biochemical oxygen demand and total suspended solids are 30 parts per million, however, according to the discharge monitoring reports since 1998, the treatment plant has been out of compliance 50% of the time. The department has issued at least four Notices of Violation during that time.

Efforts in the 80s and 90s to raise funds for upgrading and maintaining the collection system met with great resistance. What little funds were raised for sewer improvement projects were later embezzled by city officials. The perpetrators were convicted this past year but most of the money is considered lost.

In September 1998, EPA Region VII issued a Compliance Order requesting an engineer's report and outlining a schedule for compliance. However, it is obvious that collection of a penalty is not feasible at this time.

Efforts to connect to the nearest areawide sewer district, Excelsior Springs, have been unsuccessful because Excelsior Springs is also hydraulically overloaded and cannot accept further connections until upgrade is completed. Homestead Village says they are committed to undertaking a major repair and replacement project of the collection system and the wastewater treatment plant's aeration lines. A recent filming of the sewer system located many breaks, cracks and points of infiltration. Inspections also indicate some improvements can be made to the treatment plant to improve efficiency, however, it is not possible to tell at this time if the plant can actually operate within compliance. Until the infiltration and inflow problem is resolved, the solids will not remain in the aeration tank long enough to provide true biological treatment of the wastewater.

Although the city appears to be moving forward, it is obvious by the span of time they do not take this matter seriously. In light of previous enforcement action by EPA that did not result in the Homestead Village treatment plant achieving compliance with the Missouri Clean Water Law, further efforts to resolve the violations through the Water Pollution Control Program appear futile. Mr. Mohammadi recommended the matter be referred to the Office of the Attorney General for appropriate legal action.

No one was present representing Homestead Village wastewater treatment plant.

Commissioner Greene stated she is always amazed at how long it takes to get matters referred to the Attorney General's Office.

Commissioner Greene moved to **refer Homestead Village wastewater treatment plant to the Office of the Attorney General** for appropriate legal action; seconded by Commissioner Perry and unanimously passed.

Rainbow Acres Subdivision

Mr. Mohammadi reported Rainbow Acres Subdivision consists of 34 residences with wastewater treatment provided via a 3-cell lagoon located in Johnson County. A Missouri State Operating Permit was issued on June 26, 1997 and expires in June 2002 with the unclassified receiving stream identified as Walnut Creek.

The violations of the Missouri Clean Water Law center around lack of a proper continuing authority, that is, there is no single entity which has complete control over the wastewater treatment facilities. This was discovered when Mr. Wallace Jenkins requested the permit be transferred since he had just purchased the lagoon from the permittee, Mr. Parkhurst. It seems the original developer of Rainbow Acres Subdivision deceased and Mr. Parkhurst's estate sold undeveloped property along with the lagoon to Mr. Wallace Jenkins. However, before the permit issue could be cleared up, Mr. Jenkins sold the property to Affordable

Homes, Inc. Currently, counsel for Affordable Homes, Inc. has indicated Affordable Homes, Inc. will be declaring bankruptcy in the near future. Counsel for Affordable Homes, Inc. has also indicated to department staff that there are two lien holders on the subject property, First Community Bank of Knob Noster and Mr. Wallace Jenkins.

As of December 2001, permit fees for 1999, 2000 and 2001 and interest in the amount of \$2,896.00 are outstanding.

Staff from the department Environmental Assistance Office and the Kansas City Regional Office have been involved with providing assistance to the homeowners with resolution of the continuing authority issue. Progress has been made. Counsel for the homeowners have indicated to staff that Rainbow Acres Subdivision has incorporated and is functioning like that of a Homeowner's Association. However, the lagoon still remains outside the control of the subdivision.

It is felt a civil penalty is not appropriate at this time but permit fees and interest should be collected. However, because of the legal complexities concerning Rainbow Acres Subdivision, it appears voluntary compliance with the Missouri Clean Water Law will not be achieved. Mr. Mohammadi recommended this matter be referred to the Attorney General's Office for appropriate legal action.

Justin Carver, representing Rainbow Acres Homeowners Association, Inc., stated Rainbow Acres has been using this adjacent lagoon since development of the subdivision. During the development of the subdivision, the developer connected the homes to the lagoon and then deeded the lagoon to a third party and it has passed to other parties since.

Neither the owner of the lagoon nor the homeowners association are eligible for a permit because neither are a continuing authority under the commission's regulation. Rainbow Acres has attempted for some time to work with the owner to purchase the lagoon or rights to the lagoon so that they would be a continuing authority under the permit regulation. Mr. Carver stated the current owner has been nonresponsive since attempts to work with them began in August 2000. He suggested referral to the Attorney General's Office where they would proceed against Affordable Home Builders would be the only way to resolve the matter.

Commissioner Minton moved **to refer Rainbow Acres Subdivision to the Office of the Attorney General** for appropriate legal action; seconded by Commissioner Hegi and unanimously passed.

Chip Mill Moratorium and Intensive Timber Harvesting

Becky Shannon, Nonpoint Source Coordinator and Acting Chief of the Water Pollution Control Program Planning Section, reported high capacity chip mills have demonstrated an ability to use large quantities of timber, using almost all of the available timber at a given harvest site. If best management practices are not used during this harvest, it can have an

adverse affect on water quality. Missouri's important forest resources put the state at risk for environmental harm from improper harvesting practices. Because of concerns about the impact of high capacity chip mills and the impact of these harvesting operations, an Advisory Committee on chip mills was established in 1998. Government, industry, and citizens' groups were represented on this committee. The Governor's Advisory Committee met numerous times over a two-year period and produced a final report dated August 1, 2000. This report contains recommendations for timber harvest in Missouri.

Ms. Shannon continued that on March 15, 2000, the Clean Water Commission directed the department to refrain from issuing storm water permits for industrial wood processing and harvesting operations for a period of 24 months. She noted that staff provided information to the commission indicating that there were as many as four chip mills operating at one time in the Ozarks region. In talking to permits staff recently, there are two permitted facilities. There is a third facility that staff had reason to believe might be engaged in chip mill activities but that facility did not apply for a permit. The fourth entity never sited in Missouri.

Commissioner Herrmann asked if these were high capacity chip mills.

Ms. Shannon responded the two that are permitted are high capacity chip mills. It is unclear if the third facility even operated as a chip mill in the traditional sense. The fourth was Georgia Pacific who sited a log concentration area in Missouri and a chip mill in Arkansas.

The moratorium enacted by the commission became effective in April 2000. Ms. Shannon noted that chip mill operations are subject to storm water permitting under the federal Clean Water Act and the Missouri Clean Water Law. The harvesting of trees is specifically exempted from requiring such a permit through federal regulations. The commission was provided information on the activities that are subject to permitting and those that are exempted. Ms. Shannon explained the department is not able to issue a permit to a facility for harvesting practices.

Ms. Shannon further explained that at the April 2000 meeting, the commission also directed staff to develop a regulatory package which prevents, controls, and abates any new or existing pollution of the waters of the state caused by storm water from industrial wood processing and harvesting operations. Staff provided information on this matter to the commission at its November 28, 2001 meeting, including a draft outline of a rulemaking approach. That outline was again provided in the briefing packet for this meeting. At the November 2001 meeting, the commission requested more education on this issue. Presentations were made by the Missouri Department of Conservation, the Dogwood Alliance and the Missouri Forest Products Association at the last commission meeting. The commission has received over 100 letters requesting an extension of the chip mill moratorium. Ms. Shannon stated she knows of no letters being received supporting expiration of the moratorium. Without action by the commission, the moratorium will expire April 20, 2002.

Ms. Shannon provided the commission a strategy that has been developed by staff for addressing the issue of chip mills and intensive timber harvesting using a three-pronged approach of education, incentives, and rules. Based on staff's review of what has gone on in Missouri and other states and discussions with other professionals, staff believes that the issue of environmental damage caused by improper forest harvesting practices, whether it's related to chip mills or otherwise, is best addressed by combining these three approaches. The success of such an approach is dependent on the collaboration of a number of key natural resources partners including the Department of Conservation, the Department of Agriculture, as well as the Soil and Water Conservation Districts. With the approval of the commission, staff plans to work with these partners to further refine the approach over the next six weeks. With commission approval, staff expects to present the refined program including a draft rule to the public in a series of public meetings in May. This would allow staff to further refine the draft rule based on public input and begin the rulemaking process so as to have a rule in place by mid-April 2003.

Ms. Shannon recommended that the commission extend the moratorium for one year to allow further development of both regulatory and educational approaches to address intensive timber harvesting. Ms. Shannon stated the commission gave staff two years to work on this issue and they did not meet this schedule. Staff believes they can meet the schedule they have outlined today. Information from other states has been collected, staff has outlined what they believe is important in Missouri, discussions are underway with the Department of Conservation, the Soil and Water Conservation Districts are looking at pilots for forest management practices, and additional EQIP funding is a possibility for providing incentives.

Commissioner Minton asked if he understood that staff was planning to have the Clean Water Commission promulgate a rule to affect the timber harvest process in Missouri. He asked how many of the recommendations of the Governor's Advisory Committee have been explored and found not to be satisfactory. Commissioner Minton made the following comments. The report of the Governor's Advisory Committee contains enough practices to successfully address this issue if everyone participates without having to promulgate a rule. The Department of Conservation who is responsible for Missouri's forests during last month's presentation did not express the need for the commission to promulgate a rule on timber management. The presentation was on voluntary best management practices utilizing the coordinated efforts of all the state agencies, federal monies, and incentive programs. This is overstepping the commission's constitutional boundaries. If there were a problem once the timber is harvested and the landmass goes into a receiving stream, the commission would have the authority to go after the perpetrator.

Commissioner Minton asked how many cases there are where staff has sought restitution and if none, why not. He commented that if examples had been made of bad actors this issue would not be before the commission. He continued he is in favor of developing incentive and education programs to affect timber harvesting in the state but will in no way support promulgating a rule to control the timber harvest. Commissioner Minton stated if the Governor's Advisory Committee recommendations fail, he believes the Department of Conservation would come to the Clean Water Commission for help. He continued the

Department of Conservation, the Dogwood Alliance and forestry group have asked for a coordinated effort. For two years no aspect of the Governor's Advisory Committee report has been implemented. The moratorium was needed because no one did anything in that two-year timeframe. Commissioner Minton stated he is not in favor of extending the moratorium.

Commissioner Minton asked if restitution has been sought from anyone who affected a clear cut or over harvest situation.

Mr. Mohammadi responded staff has not sought restitution for these activities.

Commissioner Hegi asked if there are any cases where there has been extensive clear cutting that has caused a problem.

Ms. Shannon replied she is not aware of staff taking action against anyone for water quality problems caused by timber harvesting.

Commissioner Hegi asked if there is a 40-acre exemption.

Ms. Shannon replied there is. The rulemaking described is one of the recommendations in the Governor's Advisory Committee report that includes this exemption. Best management practices would be voluntary except when a landowner, trustee, timber deed holder, or assignee plans to remove 50% or more of the forest cover on more than 40 contiguous acres within one year.

Commissioner Hegi said 40 acres could be cut off with a strip left so it is not contiguous and then 40 more acres cut off. He noted he agreed with Commissioner Minton. He asked if this is just private property or if public land would be included.

Ms. Shannon replied she did not know if this would be applicable on public land.

Commissioner Perry asked if staff is aware of anyone that has caused an erosion problem by clear cutting in the last two years.

Ms. Shannon responded she is not aware of any documented water quality impairment due to this.

Commissioner Minton asked why a rule is being discussed if there are no documented water quality impairments.

Ms. Shannon replied the staff directive stated staff was to pursue a regulatory package. She continued that there have been problems caused in neighboring states. Staff is investigating a situation where there wasn't a clear cut but harvest was done without use of best management practices. Staff is trying to document what happened because once an event has occurred, it is too late. Ms. Shannon noted we need to be very concerned about preventing pollution

problems. Sometimes education and incentives are the best methods to accomplish this. When we think there is a real risk of environmental harm or pollution, then regulations are needed for staff to be able to act. Ms. Shannon noted this is why the three tiered approach has been proposed.

Chairman Herrmann stated he believes the commission's direction over the past two years has been for staff to develop more information so the commission can become educated on what the problems are and how they affect the waters of the state. Direction was not given to develop a regulatory package.

Ms. Shannon apologized if she misconstrued the commission's directive but staff also reviewed the Advisory Committee recommendations and developing a regulation was part of those recommendations.

Mike Alensandrini, St. Louis Regional Chamber and Growth Association, reported he is staff to an environmental council comprised of over 270 members of the St. Louis regional community that represent the regulated community and a number of service providers to that regulated community. He stated he was directed to address the commission regarding the process by which the moratorium was enacted. The business community needs a consistent, predictable and certain form of regulation and the notion that a moratorium can be proposed that seems to be without legal and policy driven support is something that the membership finds counterproductive to the regulated community.

Cory Ridenhour, Missouri Forest Products Association, reported the association represents forest land owners, loggers, foresters, saw mills, value added wood products facilities, and wood waste recovery facilities. He stated there are no impaired waters in the state due to silvicultural activities. Voluntary use of best management practices do work and continuing education efforts are ongoing. Mr. Ridenhour stated the first moratorium was issued at the request of Governor Carnahan so the chip mill issue could be studied. The chip mill committee did a study and did not recommend any prohibitions of chip mills. The Clean Water Commission also asked for additional education and research. Mr. Ridenhour noted there has been no action by the Department of Natural Resources over the past two years to provide the requested information. In March 1999, the commission directed staff to provide educational information, not a regulatory package. Mr. Ridenhour provided copies of e-mail comments on the issue to the commission. He noted the association supports the efforts of the Clean Water Commission and Air Conservation Commission and the permitting process of point source waters including chip mills. Some of the association's members do question chip mills. The association has heard about possible problems in other areas and is very concerned about water quality as well as the current and future wood resource in Missouri. Mr. Ridenhour reported there is one company left processing in Missouri and is using best management practices in all their operations. In order to address the chip mills and other possible bad actors, the association has established an inconsistent practices hotline and procedures to address any noncompliance. There are currently no industrial chip mills coming to Missouri. Mr. Ridenhour noted the main problems with the moratorium are the

legal and constitutional issues. The association believes the commission has no authority to issue moratoriums on an industry. The rulemaking process has to be met.

Mr. Ridenhour stated the association believes in voluntary best management practices. These practices have been working in Missouri and elsewhere. The association has been providing education efforts effectively. There is room for improvement and the association is taking actions to encourage the use of best management practices and providing valuable education efforts to educate forest landowners, loggers, industry and others. The association has met its goals from the Governor's Advisory Committee on chip mills. Its statewide logger training program has a heavy emphasis on best management practices. These loggers actually do the work on the land. Forest land or education test programs have been developed and executed and further development will come in the future. Forest landowners own the land and are responsible for the land. The association also does the SFI Program and the Missouri Tree Farm Program which also helps promote these activities. A trained logger directory is provided to the public. The Department of Conservation is doing the same.

Mr. Ridenhour stated education programs are done at annual and regional meetings. The board recently unanimously approved a recommendation to require all members of the Missouri Forest Products Association to utilize best management practices. A compliance program exists where any member of the public can hold members accountable for their actions.

Mr. Ridenhour stated the regulatory authority for forests rests with the Department of Conservation. There is no statutory authority for the Clean Water Commission to promulgate rules affecting the policy of this state. The association does not believe the Department of Natural Resources has the ability to issue permits, do regulatory issues, and so forth. Mr. Ridenhour noted it currently takes several months to get a simple general permit. Such permits will hamper the utilization of best management practices.

Mr. Ridenhour noted EPA has dropped silviculture from its list of concerns of waterbody impairing issues. The association knows they are making a difference to improve the water quality of the state. He concluded that if a rulemaking package goes forward, the association would like this to be a collaborative effort. The association approached the director of the Department of Natural Resources regarding collaborative education processes and was told funding was not available. Mr. Ridenhour noted the Governor's Advisory Committee recommendations did contain a provision regarding an exemption for a certain acreage, which was intended to be a legislative proposal.

Commissioner Perry noted she agrees with the legality issues mentioned. She questioned why there is a concern about an inconsistent practices program if there is no impairment due to silviculture.

Mr. Ridenhour responded there are a few bad actors in any industry.

Commissioner Perry asked if there would not then be some damage to the water.

Mr. Ridenhour responded healing over of sites occurs with time.

Commissioner Perry stated healing over does not necessarily indicate that there was never any damage.

Mr. Ridenhour replied there's damage but did it contribute to a major water impairment, did erosion from the site hurt the water quality is the question. He noted pressure with inconsistent practices does help make sure companies do act responsibly.

Commissioner Greene stated sediment does not come out of the stream; it just washes downstream. Erosion into the water is a long-term problem.

Mr. Ridenhour stated rain causes more problems than any forest products site.

Commissioner Greene noted there will not be a problem if there is vegetation on the site. She asked how the public knows about the association's inconsistent practices program.

Mr. Ridenhour responded through the Department of Natural Resources regional offices, the association's web site, press releases, Department of Conservation offices, and sheriff's departments.

Roy Hengerson, Sierra Club, reported the Sierra Club was very involved in the workings of the Governor's Advisory Committee and was very supportive of the commission's moratorium. The moratorium was enacted two years ago because the state had no way to control the impacts of chip mills and the associated harvesting on water quality except through the NPDES permit process. Mr. Hengerson noted all the factors in play two years ago still exist today and are still valid. He continued a combination of education, incentives, and some sort of regulatory process is needed for situations where the other two methods don't achieve water quality; there is no reason to discontinue the moratorium. The Sierra Club felt the Advisory Committee recommendations did not go far enough. A chip mill bill was introduced late in the session and not yet had a hearing so a legislative change is not expected this year. Mr. Hengerson stated collaborative efforts take time and recommended extension of the moratorium for at least one more year.

Commissioner Minton asked why there has not been legislation introduced before now if this issue is such a prevalent one to take care of the issues the commission attempted to deal with.

Mr. Hengerson replied the environmental community has worked carefully to come up with a bill that would make the right compromise between the need to protect the forests, water quality, the economy of the areas that are dependent on healthy forests, and private property rights.

Responding to Chairman Herrmann's question, Mr. Hengerson said the proposed legislation is House Bill 2040.

Commissioner Perry asked why the Sierra Club sees this as a chip mill issue rather than a matter of lack of best management practices in the forestry industry.

Mr. Hengerson replied it is broader than chip mills and forest practices is an important issue. Because the high capacity chip mills use so much wood and because they can process that amount, there is the possibility of a rapid depletion of the forest resource in that area whereas other forest operations don't have that kind of impact because of the smaller scale.

Commissioner Perry asked if people sell their trees because someone forces them to do it because they have a high capacity mill.

Mr. Hengerson said it is a way for a landowner to make quick money off of their holdings. Generally it's not the longstanding owners of forest land that do this liquidation. Speculators often come in and buy big tracts and liquidate the timber for a quick profit. He stated many of the logging companies doing the harvesting are not even from Missouri.

Commissioner Perry noted she still does not understand why the chip mill is responsible for the landowner's practice. She would hope best management practices were being used and it's not the chip mill's fault any more than the landowner's.

Mr. Hengerson responded it's the ability of the chip mills to use such a large volume of wood that they quickly deplete the wood available from anyone willing to sacrifice their timber. He continued that there may be less of an impact now but that is due to the downturn in the economy. When the economy rebounds, there will again be the demand for chips and the threat of the chip mills will increase.

Commissioner Minton noted the two chip mills the commission visited were not taking high grade lumber to be made into chips. It's not the chip mill's responsibility to control the willing seller. If a rule is promulgated for best management practices, will a landowner be told he can sell only a certain portion of his timber because he must keep a certain percentage of it covered by trees? Commissioner Minton noted the vast percentage of the timber in the state is owned by very small acreages.

Mr. Hengerson responded these are all-important issues that need to be worked out and education needs to be a large component of whatever is done. The Sierra Club believes there needs to be some control on what the eventual impact of these large chip mills can be. Mr. Hengerson stated the Governor's Advisory Committee toured the Willamette chip mill and they weren't chipping on that day. One of the foresters on the tour noticed that they had so many saw logs in the woodpile. They want volume; it doesn't matter if the quality of the wood is good. The impacts to water quality are variable but when you get a large rain on one of these large harvest areas that was done without best management practices, you get a tremendous amount of erosion leading to siltation.

Commissioner Minton asked if that person is then to be held responsible for that degradation.

Mr. Hengerson responded the moratorium would prevent the problem of large capacity chip mills.

Commissioner Minton stated once the moratorium is removed and there is a violation of the Clean Water Act during removal of timber, the landowners would have to be responsible for the liability.

Mr. Hengerson noted they want to encourage best management practices while at the same time not putting too much of a burden on private landowners. If the moratorium is not extended there will not be an opportunity to address this issue adequately.

Kevin Perry, President of the Regulatory Environmental Group for Missouri, reported REGFORM is an association of 40 businesses from around the state. Members of the association are not involved with forestry or wood products. Mr. Perry stated the members of REGFORM do not want the moratorium extended. They believe it is bad form to ban an otherwise legal industry from doing business in the state of Missouri. Members fear the commission could do a similar action against another industry if they don't understand something about it, which is a dangerous precedent. Mr. Perry mentioned that according to Economic Development, the state has lost 25,000 manufacturing jobs in the last year. Continuing the moratorium would only add to this problem of fewer jobs in Missouri. Mr. Perry stated the association believes the well-intentioned moratorium of two years ago was a mistake. He continued that they are concerned that the moratorium if extended, will be an unconstitutional act. The Department of Conservation has authority over forestry practices. The problem is with forestry practices and the Clean Water Commission does not have the authority to control forestry practices. Mr. Perry suggested if the commission still wants to institute this ban on a legal business in the state, that it be done through promulgation of a regulation so that it will not violate the laws of the state.

Commissioner Greene asked why it took two years to come forward if this is unconstitutional.

Mr. Perry responded he was surprised that the action ever occurred and the moratorium grandfathered in everybody who was currently operating a chip mill in the state. Everyone who might be a litigant in the matter was eliminated. There is no standing for anyone to file a lawsuit.

Bill Bryan, Assistant Attorney General, noted he has defended lots of lawsuits where the plaintiffs did not have standing. He continued that whenever something is so clear cut that it violates the law with no question, lawsuits are filed. Mr. Bryan noted there are legal issues and there are ways to resolve them that have not been tested. He continued that there is dissatisfaction in all areas with the process but the situation is the same now as it was several years ago except that the economy has taken a down turn. When things get better, there will be more demand for paper products, chips, and trees to make the chips. Mr. Bryan stated when that occurs, the state's water resources will be at risk as they have been in other states.

He continued there is not a specific recommendation to the commission for action. Possibly there is something the commission could do that would be within the commission's authority that would protect the waters of the state and not invade the Conservation Commission's responsibilities and constitutional powers and authorities. Mr. Bryan recommended that the staff be asked to look into this to see if something can be done to protect Missouri's water resources.

Chairman Herrmann noted Mr. Bryan negotiated with one of the mills in the state and secured an agreement. Certain conditions were imposed on the mill that eliminated most of the objectionable practices and provided solutions to some other potential problems. He asked if a solution might be for the commission to direct staff to include these conditions in any new permits that comes before them.

Mr. Bryan responded it would provide solutions but the conditions have not been tested. It is not known whether the commission would have the authority to impose those on a party who was not willing to accept them.

Chairman Herrmann noted it might be questionable legally but it provides solutions that are already imposed.

Mr. Bryan replied there is a practical consideration which levels the playing field so there would be some benefits to this kind of approach.

Commissioner Hegi asked if there have been any problems with that company since these conditions have been imposed.

Mr. Bryan responded he has no knowledge of any problems since that time.

Commissioner Perry asked what would be the argument to the court on the commission's authority to issue a moratorium and what would be the authority on which a chip mill would have the responsibility for the best management practices of a third party.

Mr. Bryan responded an argument would be constructed based on the constitutional powers of the Department of Natural Resources and the statutory authorities of this commission, which are very broad. Plenary power to protect water quality in the State of Missouri. Mr. Bryan noted the argument that this belongs under the authority of the Department of Conservation so the Clean Water Commission doesn't have any authority, is a very dangerous statement.

Commissioner Perry noted the moratorium denies all new business in a certain industry that is otherwise legal. She asked what authority the commission has to declare a moratorium.

Mr. Bryan responded the current staff directive instructs staff not to grant a permit, which is different from not allowing an application to be made. Under the constitution and the commerce clause, it is not true that a state cannot place any restrictions on the business that is

done within its boundaries. There are very few cases where the U.S. Supreme Court has struck down a state regulation that interferes with interstate commerce. There are many cases in which regulations on businesses have survived scrutiny under the commerce clause.

Commissioner Perry noted the moratorium says none of that business can move into the state because not giving a permit is saying the business cannot legally exist in this state.

Mr. Bryan replied the business could exist in the state but it could not discharge to the waters of the state.

Commissioner Perry asked if discharge isn't required to operate a chip mill.

Mr. Bryan stated the two large chip mills that he is familiar with use two entirely different processes and he was not certain if it's possible to operate a chip mill without discharging.

Commissioner Perry reiterated her question about third parties.

Mr. Bryan replied there are a lot of issues in the law in which one company attempts to place its liability on a third party. In some instances, the third party is responsible for whatever environmental harm occurred. Mr. Bryan stated you would have to look on a fact specific, case-by-case basis on whether or not the third party was actually responsible. There is clear legal authority to hold a principle responsible for the actions of its agents if this kind of relationship can be established.

Commissioner Perry noted she is asking about a mom and pop operation with more than 40 acres that wants to sell to a particular chip mill. There is no contractual basis so on what grounds can the chip mill be required to tell them what kind of practices they must use?

Mr. Bryan replied it's been suggested that for the chip mill to do business, they would have to acquire their raw materials in a certain way. That would control whom they chose to do business with and who chose to do business with them. It's not necessarily holding them responsible for what the third party does.

Chairman Herrmann stated the discharges the commission was most concerned with at the existing chip mills was storm water runoff from the chip mill operation itself; that's what the permits were intended to control.

Commissioner Minton noted he has never seen the final permit and asked that he be provided a copy to know what conditions were accepted.

Commissioner Greene noted that Commissioner Minton stated the Department of Conservation had not approached the Clean Water Commission for help. She stated they would not come to the commission because they would not even talk to the commission for two years. She continued that the commission is not regulating forest practices but what happens to the water. Private property is an issue but when whatever happens on private

property reaches waters of the state everyone is affected. Commissioner Greene stated she believes education and incentives are great especially if cutting of certain areas is prohibited. Possibly tax breaks could be given and the incentive could be a penalty. Strictly voluntary programs have not worked in the past. Even with the Clean Water Law, there are always referrals to the Attorney General's Office. Commissioner Greene noted with the topography in the Ozarks, the whole issue of cutting off all this land is a real potential water problem and some things have to be done. Issues to decide are the moratorium and what does staff need to do. Commissioner Greene stated she supports continuing the moratorium since that is the best current method of working on this issue until further action is taken. Education and incentives need to be a focus but some rulemaking needs to be done also. Commissioner Greene noted this is a great opportunity for the commission to be proactive rather than reactive.

Commissioner Kelly stated she supports the moratorium for many of the same reasons. When the moratorium was enacted two years ago the commission was concerned about the discharge at the chip mill and one of her concerns was also the effect to the water from the cutting. Things have not changed except there has not been a demand for chip mills due to the economy. Commissioner Kelly stated she believes this demand will return and the commission needs to be ready. She noted she is disappointed that not much was done in the two years but that is not a reason not to extend the moratorium. Commissioner Kelly noted she is concerned about private property but there are other aspects and that is why there are regulations on private property and its use.

Commissioner Perry stated her first commission meeting was the meeting after the commission voted for the moratorium. She continued she was bothered as an attorney by this action because she felt there were some Constitutional issues that bothered her because of personal property rights. Commissioner Perry noted she does not believe this country has the right to hold others responsible for the actions of someone else. She noted clearcutting on highly erodible ground is a very bad thing to do but just because we don't like something that is happening, it does not give us the right to take the improper approach. Commissioner Perry stated the legislators need to be contacted about coming up with a more Constitutional, proper way of approaching this issue. She noted she will vote against the moratorium because she does not believe it's right and it may force people to do it the right way.

Chairman Herrmann made note of Commissioner Minton's point regarding sediment discharge to a stream being provable and the perpetrator of that act being held liable for the damage created by that action and not some third party.

Commissioner Minton moved that **the moratorium regarding issuance of storm water permits to high capacity chip mills be allowed to expire**; seconded by Commissioner Perry and passed with the following vote.

Commissioner Greene: No; Commissioner Hegi: Yes; Commissioner Kelly: No;
Commissioner Minton: Yes; Commissioner Perry: Yes; Chairman Herrmann: Yes

Commissioner Minton moved that **any new storm water permits issued to high capacity logging industry within the state, specifically chip mills but not limited to chip mills, contain the conditions negotiated with Willamette and contained in their permit;** seconded by Commissioner Hegi and passed with the following vote:

Commissioner Hegi: Yes; Commissioner Kelly: Yes; Commissioner Minton: Yes;
Commissioner Perry: No; Commissioner Greene: No; Chairman Herrmann: Yes

Commissioner Hegi stated the commission can look at this issue again if it becomes a problem and encouraged the industry to be responsible and those that educate the industry to do so.

Commissioner Greene moved that **staff follow the program development outline that was provided to the commission looking at the areas of incentives, education, legislation and rules.**

Commissioner Minton asked if the Department of Natural Resources would then proceed with promulgating rules to control the harvest of timber in the state.

Commissioner Greene noted the rulemaking would be to protect water quality in the state.

Commissioner Perry noted staff would be asked to investigate the possibilities of what can be done, not necessarily to develop a rule but to come up with legislative changes before a rule is promulgated.

Commissioner Minton asked if this includes cooperative efforts with all the other agencies.

Commissioner Greene responded it does.

Commissioner Perry seconded the motion. Motion passed unanimously after roll call vote.

LEGAL MATTERS

Commission Action on Request for Stay and Motion to Extend Stay Appeal 354 Murphy Family Farms Ozark-Osage Pyramid

Deborah Neff, Commission Counsel, reported a stay was granted to the appellant, Murphy Family Farms, which expired after 180 days. The appellant applied to extend the stay until the appeal was resolved. This was opposed by the department after which agreement was reached on a 180-day stay. The hearing officer has recommended that the stay be granted for 180 days. Ms. Neff recommended granting the stay as both parties are in agreement.

Commissioner Hegi moved to **grant the stay in Appeal 354 Murphy Family Farms Ozark-Osage Pyramid;** seconded by Commissioner Greene and unanimously passed.

Closed Session

Commissioner Perry moved to **go into closed session** at approximately 3:50 p.m. to discuss legal, confidential, or privileged matters under section 610.021(1), RSMo; personnel actions under Section 610.021(3), RSMo; personnel records or applications under Section 610.021(13), RSMo or records under Section 610.021(14), RSMo which are otherwise protected from disclosure by law; seconded by Commissioner Greene and unanimously passed.

Commissioner Greene left the meeting prior to the closed session.

Commissioner Hegi moved to **reconvene the open session** of the meeting at approximately 6:00 p.m.; seconded by Commissioner Perry and unanimously passed.

Commission Action on Appeal 362 Holcim (Holnam), Inc. Water Quality Certification

Commissioner Perry stated it is the commission's intent to have commission counsel draft the Findings of Fact, Conclusions of Law and Order.

Commissioner Perry moved to **withdraw certification of the Holcim 401 certification because of failure of Department of Natural Resources staff to comply with statutory regulations regarding requirements for a public hearing. Upon reapplication by Holcim, the Department of Natural Resources is directed to hold a public hearing which shall be limited to 401 certification issues. The Department of Natural Resources is ordered to require a mitigation plan at the time of application for certification. Staff is directed to revise 10 CSR 20-6.060 as it pertains to public hearings so that the ambiguity contained therein is resolved, specifically addressing the issue of who holds the public hearing and on what basis a public hearing is required. If the basis is sufficient interest, sufficient interest is to be defined.** Commissioner Hegi seconded the motion. Motion passed unanimously.

401 Water Quality Certification Checklist

Commissioner Minton asked that the checklist include language regarding if the department determines that a mitigation plan is necessary, the mitigation plan is due before the department issues a 401 certification.

There being no further business to come before the commission, Chairman Herrmann adjourned the meeting at approximately 6:10 p.m.

Respectfully submitted,

Scott B. Totten

Interim Director